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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FCP - 176381

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on August 23, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on December 6, 2016, by telephone.

The issue for determination is whether the agency properly determined the Petitioner is no longer eligible for Family Care due to a change in level of care to a non-nursing home level of care.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
MY Choice Family Care  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She lives alone.
2. Petitioner's diagnoses include allergic rhinitis, anxiety disorder, COPD, hypertension, GERD, epilepsy, hyperlipidemia, major depressive disorder, chronic pain, scoliosis, headache syndrome,

intervertebral disc degeneration, osteoporosis, spondylosis, schizophrenic disorder, ulcerative colitis and urinary incontinence.

3. On December 15, 2015, the FC agency performed and completed a Long Term Care Functional Screen (LTCFS) for the Petitioner. The assessor determined the Petitioner met the target groups for physical disability and severe/persistent mental illness. The assessor determined the Petitioner was independent with all activities of daily living (ADLs) except bathing where she required assistance in/out of tub and with washing. With regard to Instrumental ADLs (IADLs), the Petitioner was reported to be independent with money management and telephone use but required the following assistance:

Meal Prep – Level 1 – able to prepare simple meals but requires assistance with grocery shopping

Medication Administration/Management – Level 1 – needs assistance due to non-compliance

Laundry/Chores – Level 2 – requires assistance with laundry in the basement and with other chores due to fatigue, pain and weakness

Transportation – Level 2 – does not drive due to pain and medications that make her drowsy

It was noted that the Petitioner does not require overnight care/supervision. She was noted to have no issues with communication. The assessor determined the Petitioner did have memory loss issues. She was noted to be independent with making decisions for herself. She has no issues with wandering, self-injurious behaviors or offensive/violent behaviors. Petitioner was found to be at Risk Level 2.

4. On June 2, 2016, the FC agency performed and completed a Long Term Care Functional Screen and re-screen for the Petitioner. The assessor determined the Petitioner met the target groups for physical disability and severe/persistent mental illness. The assessor determined the Petitioner was independent with all ADLs. It was noted that she used a rollator for mobility and her gait was unsteady. She demonstrated the ability to transfer in/out of the tub, reach the top of her head and her lower extremities to wash, turn faucets on/off, regulate water temperature and fully wash and dry herself. She was reported to use a tub bench and hand-held sprayer. For dressing, she demonstrated an ability to choose appropriate clothing, reach down to put shoes on, use zippers and buttons. Petitioner was noted to access all areas of her apartment with her rollator. It was reported that the Petitioner experiences urinary incontinence daily. She reported being able to independently put on and remove incontinent products, transfer on/off toilet, and cleanse herself. Petitioner demonstrated the ability to get in/out of chair several times during the visit.

With regard to Instrumental ADLs (IADLs), the assessor determined that the Petitioner is independent with money management, and telephone. The assessor determined the Petitioner requires assistance with the following IADLs:

Meal Preparation – Level 1 – able to make simple meals; needs assistance with grocery shopping

Medication Administration/Management – Level 1 – needs assistance with set-up due to cognitive limitations; is able to take meds on her own from bubble pack; able to report medications prescribed and the times when she is to take them; occasionally forgets to take meds

Laundry/Chores – Level 2 – unable to access laundry in the basement due to mobility issues; laundry to be completed more than once/week due to incontinence; requires assistance with lawn care and snow removal

Transportation – Level 2 – cannot drive due to cognitive and physical limitations.

It was noted that the Petitioner does not require overnight care. She noted to have no issue with communication. With regard to memory loss, it was noted that the Petitioner was able to recall the scheduled visit, remember the case manager, go out into the community independently and remember her medical appointments. She was found to be independent with making decisions for herself. She does not exhibit any wandering, self-injurious behaviors, or offensive or violent behavior. Petitioner was found to be at Risk Level 1. The assessor stated: “Member is dx with anxiety, depression and schizophrenic disorder. Member is also dx with opioid dependence. Member is at an increased risk of entering an institute for Mental Disease (IMD) or hospital for psychiatric services. Member is not at imminent risk that institutionalization will occur within the next 6 – 8 weeks. However, without needed assistance the member may be at risk of entering a nursing home or ICF-IID beyond 8 weeks. Member does not meet the criteria for Risk 2 and therefore it is not applicable.”

5. On August 1, 2016, the FC agency issued a Notice of Action to the Petitioner informing her that her current services would be terminated effective August 16, 2016 due to a change in level of care to non-nursing home.
6. On August 23, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms “nursing home” and “non-nursing home” levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, she is eligible for full services through a managed care organization (MCO), including Medical Assistance (MA). Wis. Admin. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, she is eligible for full services only if she is in need of adult protective services or she is financially eligible for MA. Wis. Admin. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Wis. Admin. Code, §DHS 10.33(2)(c) describes comprehensive functional capacity:

(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.

5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:

- a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
- b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code, §DHS 10.33(2)(d) describes intermediate functional capacity:

d) Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
  - a. Management of medications and treatments.
  - b. Meal preparation and nutrition.
  - c. Money management.

ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Admin. Code, §DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

In this case, there was a change in ADLs from Petitioner needing assistance with bathing in December, 2015 to being independent with bathing in June, 2016. This was based on the assessor observing the Petitioner get in/out of the tub without assistance, raise her arms to be able to wash her hair and bend to

reach lower extremities. At the hearing, the Petitioner testified that she has difficulty bending to wash and difficulty getting in/out of the tub. The Petitioner's testimony is inconsistent with the observations made by the assessor as well as statements the Petitioner made during the screen. I conclude that the Petitioner has not provided sufficient evidence to rebut the agency's observations of her abilities with regard to bathing.

With regard to IADLs, there was no change in the agency's determination that the Petitioner requires assistance with 4 IADLs. I note that, per DHS 10.33(2)(c)5, an individual meets the nursing home level of care if she requires assistance with 4 IADLs **and** has a cognitive impairment. In this case, the Petitioner has several mental health diagnoses including schizophrenia, depression and anxiety. However, she was determined to be independent with cognition for daily decision making. She was found to demonstrate some memory loss at the screen in December, 2015 but demonstrated no memory loss issues in June, 2016. She has no behaviors that indicate a cognitive impairment. While the Petitioner's witness testified that she has concerns about the Petitioner's ability to recognize any side effects from her medications, she is able to report her medications and time for taking them and take them independently. The Petitioner's witness also testified that she is concerned that the Petitioner's apartment would be in disarray to the point of crisis within a few weeks. However, the evidence presented at the hearing was not sufficient for me to conclude the Petitioner has a level of cognitive impairment that would place her at risk of imminent institutionalization.

Based on the evidence presented, I find that the agency properly modified the Petitioner's level of care to a non-nursing home level of care.

### **CONCLUSIONS OF LAW**

The agency properly modified the Petitioner's level of care to a non-nursing home level of care.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

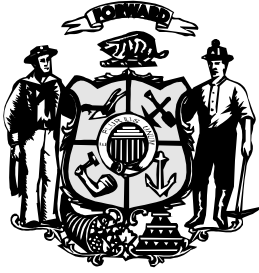
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of January, 2017

\s \_\_\_\_\_  
Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 3, 2017.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability